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APR 25 1995

COVENANT OF DEED RESTRICTION

RECORDED AT REQUEST OF

City of Richmond

APR 25 1995

AT 3 O'CLOCK P.M.
CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR
COUNTY RECORDER

FEE \$

off

Recording Requested By:

City of Richmond

When Recorded, Mail To:

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Site Mitigation Branch

COVENANT
TO RESTRICT USE OF PROPERTY

The "Drew Middle and South Property" Site
Richmond Parkway
Richmond, California

This Covenant and Agreement ("Covenant") is made on
the 24 day of April, 1995 by City of Richmond
("Covenantor"), which is the owner of record of certain
property situated in Richmond, County of Contra Costa,
State of California, described in Exhibit "A" attached
hereto and incorporated herein by this reference (the
"Property"), and by the Department of Toxic Substances
Control (the "Department"). Covenantor and the Department
desire and intend that in order to protect the present and
future public health and safety, the Property shall be used
in such a manner as to avoid potential harm to persons or
property which may result from hazardous substances which
have been deposited on the Property.

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ARTICLE I

STATEMENT OF FACTS

1.01 Description of contamination. The property is approximately 3.5 acres and is located along Castro Street in the City of Richmond. The property was a vacant parcel of land where the nearby industrial facilities had deposited fill and waste materials and which resulted in contamination of the soil. Contaminants detected in the soil are heavy metals including arsenic, antimony, copper, chromium, lead, mercury, and zinc. The property is currently part of the Richmond Parkway Bypass and is covered with the asphalt roadway and asphalt paving (herein after referred to as "Cap") to contain the contaminants and prevent the contaminants from migrating. Soil remediation at the property was implemented during the construction of the Richmond Parkway.

1.02 Health Effects. The potential routes of exposure to these contaminants are through dermal contact, ingestion and inhalation of dusts and particulates from on-site soil. The Cap eliminated generation of dusts and particulates from on-site soil. The asphalt roadway and paving would also prevent surface water from infiltrating into soils containing the contaminants. However, should the potential routes of exposure to these contaminants not be minimized or eliminated, the potential human health effects resulting from exposure to these contaminants are

1 as follows:

- 2 a. Arsenic. Arsenic compounds have been shown to
3 produce acute and chronic toxic effects which include
4 systemic irreversible damage. The trivalent compounds
5 are the most toxic and tend to accumulate in the body.
6 Chronic animal studies have shown body weight changes,
7 decreased blood hemoglobin, hepatic damage, and kidney
8 damage. Arsenic has been shown to be mutagenic in
9 several test systems, and to induce chromosomal
10 aberrations both in vivo. Carcinogenicity studies
11 with laboratory animals have reported conflicting
12 results. Several studies have reported an increased
13 incidence of bronchiogenic carcinomas in rats exposed
14 to an arsenic-containing pesticide through
15 intratracheal exposure. In humans, tumors of the
16 skin, lungs, genital organs, and visual organs have
17 been associated with arsenic exposure. Arsenic has
18 been classified by U. S. EPA as a human carcinogen.
- 19 b. Antimony. Antimony is an irritant to the nose,
20 throat and mouth. Exposure could cause cough,
21 dizziness, headache, nausea, vomit, diarrhea, stomach
22 cramps, insomnia, anorexia, unable to smell properly,
23 and cardiac abnormalities.
- 24 c. Copper. Copper salts are skin irritants, causing
25 itching erythema and dermatitis. Copper salts may
26 cause conjunctivitis in the eyes and ulceration and
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1 turbidity of the cornea. Fumes and dust of copper may
2 cause upper respiratory tract irritation, nausea, and
3 gastrointestinal tract irritation.

4 d. Chromium. Chromium compounds in the trivalent
5 (III) state are of a low order of toxicity. In the
6 hexavalent (VI) state, chromium compounds are
7 irritants and corrosive, and can enter the body by
8 ingestion, inhalation, and through the skin (Sittig,
9 1981). Acute exposures to dust or mist may cause
10 coughing and wheezing, headache, dyspnea, pain on deep
11 inspiration, fever, and loss of weight.

12 e. Lead. Acute exposure to lead may produce
13 fatigue, headache, aching muscles and bone,
14 gastrointestinal disturbances, sleep disturbance,
15 abdominal pain and decreased appetite. Chronic
16 exposure can lead to irreversible vascular sclerosis,
17 irreversible brain damage, tubular cell atrophy,
18 interstitial fibrosis, and glomerular sclerosis (Sax
19 1989).

20 f. Zinc. Zinc is an irritant, causing throat
21 dryness, coughing, fatigue, aches, chills, fever,
22 nausea, and vomiting (Sax 1989).

23 1.03 Surrounding Land Use. The Property is located
24 in the City of Richmond along Castro Street near Hensley
25 Street, and is being used as a roadway. Land uses
26 surrounding the Property are light industrial and
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1 residential. The area within a one-mile radius of the
2 Property is primarily industrial use. The nearest home
3 downwind from the Property is approximately 0.25 mile away.
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5 ARTICLE II

6 GENERAL PROVISIONS

7 2.01 Provisions to Run with the Land. This Covenant
8 sets forth protective provisions, covenants, restrictions,
9 and conditions (collectively referred to as
10 "Restrictions"), upon and subject to which the Property and
11 every portion thereof shall be improved, held, used,
12 occupied, leased, sold, hypothecated, encumbered, and/or
13 conveyed. Each and all of the Restrictions shall run with
14 the land, and pass with each and every portion of the
15 Property, and shall apply to, inure to the benefit of, and
16 bind the respective successors in interest of Covenantor.
17 Each and all of the Restrictions are imposed upon the
18 entire Property unless expressly stated as applicable to a
19 specific portion of the Property. Each and all of the
20 Restrictions are imposed pursuant to Health and Safety Code
21 Sections 25355.5 and run with the land pursuant to Health
22 and Safety Code Sections 25355.5. Each and all of the
23 Restrictions are for the benefit of and enforceable by the
24 Department.
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26 2.02 Concurrence of Owners Presumed. All purchasers,
27 lessees, or possessors of any portion of the Property shall

1 be deemed by their purchase, leasing, or possession of such
2 Property, to be in accord with the foregoing and to agree
3 for and among themselves, their heirs, successors,
4 assignees, agents, employees, and lessees of such owners,
5 heirs, successors, and assignees, that the Restrictions as
6 herein established must be adhered to for the benefit of
7 future Owners and Occupants and that their interest in the
8 Property shall be subject to the Restrictions contained
9 herein.

10 2.03 Incorporation into Deeds and Leases. Covenantor
11 desires and covenants that the Restrictions set out herein
12 shall be incorporated by reference in each and all future
13 deeds and leases of any portion of the Property.
14

15 ARTICLE III

16 DEFINITIONS

17 3.01 Department. "Department" shall mean the
18 California Department of Toxic Substances Control and shall
19 include its successor agencies, if any.

20 3.02 Improvements. "Improvements" shall mean all
21 buildings, roads, driveways, regrading, and paved parking
22 areas, constructed or placed upon any portion of the
23 Property.

24 3.03 Occupant(s). "Occupant(s)" shall mean those
25 persons entitled by ownership, leasehold, or other legal
26 relationship to the exclusive right to occupy any portion
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1 of the Property.

2 3.04 Owner(s). "Owner(s)" shall mean the Covenantor
3 or its successors in interest, including heirs and assigns,
4 who hold title to all or any portion of the Property.
5

6 ARTICLE IV

7 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

8 4.01 Restrictions on Development and Use. Covenantor
9 promises to restrict the use of the Property as described
10 in said Exhibit A as follows:
11

- 12 a. Property shall be restricted for use as a
13 roadway (i.e. Expressway, Street or Freeway).
14 No other use of the Property shall be allowed
15 without the prior approval of the Department.
16 b. No drilling for drinking water, oil, or gas
17 shall be permitted on the Property.
18 c. No raising of food (cattle, food crops, cotton)
19 shall be permitted on the Property.
20 d. No activities which will disturb the soil (e.g.,
21 excavation, grading, removal, trenching,
22 filling, earth movement, or mining) shall be
23 permitted on the Property without a Soil
24 Management Plan and a Health and Safety Plan
25 submitted to the Department for review and
26 approval.
27 e. The Property shall be posted with a bilingual

1 sign in English and Spanish stating that no
2 grading, excavation or construction activities
3 can occur on the Property without a written
4 permission of the Department.

5 f. Any contaminated soils brought to the surface by
6 grading, excavation, trenching or backfilling
7 shall be managed in accordance with all
8 applicable provisions of state and federal law.

9 g. The Property shall be used in such a way as to
10 preserve the integrity of the cap and monitoring
11 wells and any other hazardous waste containment.

12 h. The Owner(s)/Occupant(s) shall not conduct any
13 activities which would cause a potential threat
14 to public health and safety.

15 i. The Owner(s)/Occupant(s) shall maintain all
16 caps, fences, gates and warning signs, as
17 specified in the Engineering Evaluation/Cost
18 Analysis and Operation and Maintenance Plan for
19 the Site.

20 j. Any proposed alteration of the Cap shall require
21 written approval of the Department.

22 k. The Owner(s) shall monitor the Cap yearly for
23 any deterioration of the cap.

24 l. The Owner(s) shall notify the Department of each
25 of the following: 1) The type, cause, location
26 and date of any disturbance to the cap which
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1 could affect the ability of the cap to contain
2 subsurface hazardous substances on the Property
3 and 2) The type and date of repair of such
4 disturbance. Notification to the Department
5 shall be made by registered mail within ten (10)
6 working days of both the discovery of cap
7 disturbance and the completion of repairs.

8 m. The Owner(s) shall monitor the groundwater to
9 determine the effectiveness of the remedy. If
10 monitoring detects contamination at levels of
11 concern, the Owner shall develop and submit a
12 plan of correction for Department approval.

13 n. The Owner(s) grants the Department an easement
14 to the Property for inspection, surveillance,
15 monitoring, maintenance, and other activities
16 consistent with the purposes of this covenant as
17 deemed necessary by the Department in order to
18 protect the public health and safety.

19 o. Prior to sale, lease, or rental, the Owner(s)
20 shall give written notice to purchasers,
21 lessees, and tenants stating that there is
22 residual contamination as specified in Health &
23 Safety Code Section 25359.7.

24 4.02 Conveyance of Property. The Owner(s) shall
25 provide a thirty (30) days advance notice to the Department
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1 of any sale, lease or other conveyance of the Property or
2 an interest in the Property to a third person. The
3 Department shall not, by reason of the Covenant, have
4 authority to approve, disapprove, or otherwise affect any
5 sale, lease, or other conveyance of the Property except as
6 otherwise provided by law, by administrative order, or by
7 reason of this Covenant.

8 4.03 Enforcement. Failure of the Owner(s) to comply
9 with any of the requirements, as set forth in Section 4.01,
10 may be grounds for the Department, by reason of the
11 Covenant, to require that the Owner(s) modify or remove any
12 improvements constructed in violation of Section 4.01.
13 Violation of the Covenant may be grounds for the Department
14 to file civil and criminal actions against the Owner(s) as
15 provided by law.

16 4.04 Notice in Agreements. All Owners and Occupants
17 shall execute a written instrument which shall accompany
18 all purchase, lease, sublease, or rental agreements
19 relating to the Property. The instrument shall contain the
20 following statement:

21 "The land described herein contains hazardous
22 substances. Such condition renders the land and the
23 owner, lessee, or other possessor of the land subject
24 to requirements, restrictions, provisions, and
25 liabilities contained in Chapter 6.5 and Chapter 6.8
26 of Division 20 of the Health and Safety Code as made
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1 applicable to this Property by a specific Covenant of
2 Deed Restriction, a copy of which is attached hereto
3 and incorporated herein by reference. This statement
4 is not a declaration that a hazard exists."
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7 ARTICLE V

8 VARIANCE AND TERMINATION

9 5.01 Variance. Any Owner(s) or, with the Owner(s)'
10 written consent, any Occupant of the Property or any
11 portion thereof may apply to the Department for a written
12 variance from the provisions of this Covenant. Such
13 application shall be made in accordance with Section 25233,
14 Health & Safety Code.

15 5.02 Termination. Any Owner(s) or, with the Owner's
16 (s') written consent, any Occupant of the Property or a
17 portion thereof may apply to the Department for a
18 termination of the Restrictions as they apply to all or any
19 portion of the Property. Such application shall be made in
20 accordance with Section 25234, Health & Safety Code.

21 5.03 Term. Unless modified or terminated in
22 accordance with Sections 5.01 or 5.02 above, by law or
23 otherwise, this Covenant shall continue in effect in
24 perpetuity.
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ARTICLE VI

MISCELLANEOUS

6.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

6.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: "Covenantor"

City of Richmond
Department of Public Works
2600 Barrett Avenue
P.O. Box 4046
Richmond, California 94804

Copy to:

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Site Mitigation Branch

1 6.03 Partial Invalidity. If any portion of the
2 Restrictions or terms set forth herein is determined to be
3 invalid for any reason, the remaining portion shall remain
4 in full force and effect as if such portion had not been
5 included herein.

6 6.04 Article Headings. Headings at the beginning of
7 each numbered article of this Covenant are solely for the
8 convenience of the parties and are not a part of the
9 Covenant.

10 6.05 Recordation. This instrument shall be executed
11 by the Covenantor and by the Site Mitigation Branch Chief,
12 California Department of Toxic Substances Control. This
13 instrument shall be recorded by the Covenantor in the
14 County of Contra Costa within ten (10) days of the date of
15 execution.
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1 IN WITNESS WHEREOF, the parties execute this Covenant as of
2 the date set forth above.
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6 COVENANTOR: CITY OF RICHMOND

7 By: Floyd T. Johnson

8 Title: City Manager

9 Date: April 24, 1995

10 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

11 By: Barbara J. Cook

12 Barbara J. Cook, Chief

13 Site Mitigation Branch, Region 2

14 Date: April 24, 1995
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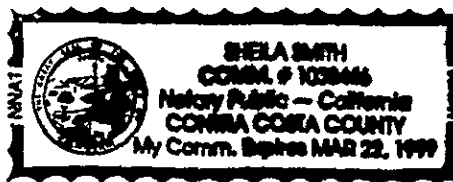
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1 STATE OF CALIFORNIA)
2)
3 COUNTY OF Contra Costa)
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6 . On April 24, 1995 before me, a Notary Public
7 in and for State of California, personally appeared
8 Barbara J. Cook, personally known to me or proved to
9 me on the basis of satisfactory evidence to be the person
10 whose name is subscribed to the within instrument and
11 acknowledged to me that he/she executed the same in his/her
12 authorized capacity, and that by his/her signature on the
13 instrument the person, or the entity upon behalf of which
14 the person acted, executed the instrument.

15 WITNESS my hand and official seal.
16

17
18 Sheila Smith
19 Notary's Signature



STATE OF CALIFORNIA)
) ss
COUNTY OF CONTRA COSTA)

On April 24, 1995, before me, LINDA L. THOMAS, a Notary Public in and for the State, personally appeared FLOYD T. JOHNSON, proved on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that his signature on the instrument the persons, or the entity upon behalf of which the person acted, executed the same.

Witness my hand and official seal.



Linda L. Thomas

LINDA L. THOMAS
Notary Public*

[Attached to Covenant to Restrict Use of Property dated April 24, 1995, between City of Richmond and California Department of Toxic Substances Control, and signed as City Manager of the City of Richmond (re Drew Middle & South Property)]

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EXHIBIT A
Legal Descriptions

The land referred to in this Report is situated in the State of California, County of Contra Costa, City of Richmond, and is described as follows:

PARCEL ONE:

Block A, as designated on the Map entitled "Map of the Andrade-Gularte Tract in Contra Costa County, California" which map was filed in the Office of the Recorder of the County of Contra Costa, State of California, on July 27, 1912 in Volume 7 of Maps, at page 175, together with that portion of Northwest Avenue, as vacated by Order of Vacation No. 630, a certified copy of which recorded March 23, 1960, in Book 3582, Official Records, page 301, that would pass by operation of Law, with the conveyance of said Block A.

PARCEL TWO:

Portion of Block B, as designated on the map entitled "Map of the Andrade-Gularte Tract in Contra Costa County, California", which map was filed in the Office of the Recorder of Contra Costa County on July 27, 1912 in Volume 7 of Maps, at Page 175 and that portion of the Northeasterly 1/2, lying Northeasterly of the centerline, of Northwest Avenue, as shown on the Map entitled "Map of Andrade Gularte Tract", filed July 27, 1912, in Book 7 of Maps, at Page 175, Official Records, lying between the Southeastern line of Castro Street and the Northwestern right of way line of Southern Pacific Company, as vacated by the City of Richmond, by Instrument recorded March 23, 1960, in Book 3582, Official Records, Page 301, described as follows:

Beginning at the intersection of the centerline of Northwest Avenue, now vacated, with the Southeasterly line of Castro Street as shown on the "Map of the Andrade-Gularte Tract in Contra Costa County, California" filed for record July 27, 1912 in Book 7 of Maps at Page 175, Contra Costa County Records; thence from said point of beginning along said Southeasterly line N 31° 41' 37" E 25.00 feet; thence continuing along said Southeasterly line, along a tangent curve to the right with a radius of 1648.30 feet, through a central angle of 21° 26' 28", for an arc length of 611.95 feet; thence leaving said Southeasterly line from a tangent bearing of S 43° 28' 51" E, along a curve to the left with a radius of 5922.00 feet, through a central angle of 01° 37' 36", for an arc length of 168.13 feet to the Northwestern line of that certain 3.99 acre parcel of land described in the Deed from Teresa Gularte to Southern Pacific Railroad Company recorded May 16, 1902 in Book 93 of Deeds at Page 513, Contra Costa County Records; thence along said Northwestern line from a tangent bearing of S 53° 46' 05" W, along a curve to the left with a radius of 1481.61 feet, through a central angle of 21° 57' 31" for an arc length of 567.83 feet; thence continuing along said Northwestern line S 31° 48' 34" W 25.00 feet to said centerline of Northwest Avenue; thence leaving said Northwestern line along said centerline N 59° 20' 13" W 166.67 to the point of beginning.

(Being APN 561-321-001 and 561-130-001)

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A- ANDRADE GULARTE TRACT

M.B.

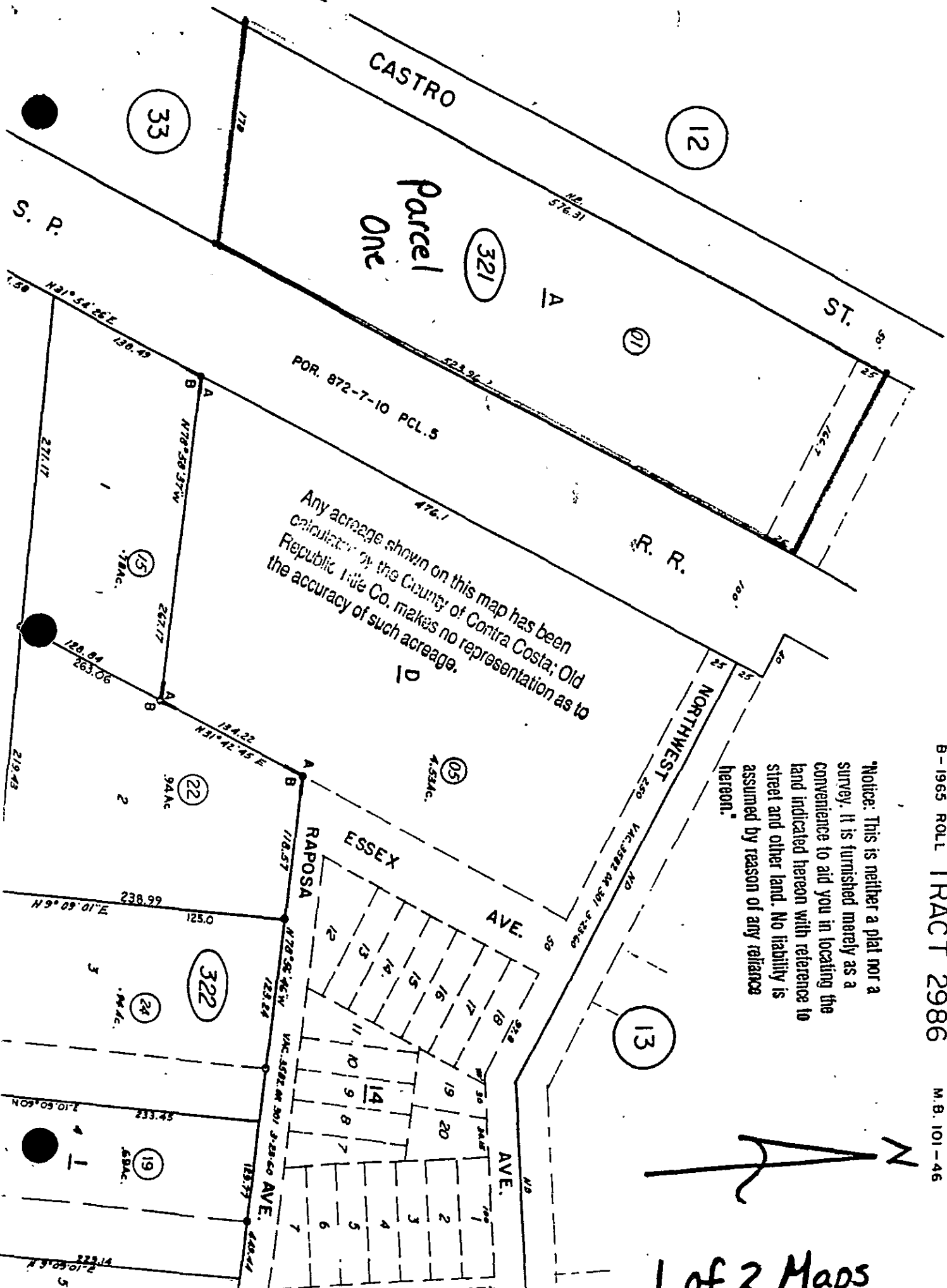
B-1965 ROLL TRACT 2986

M.B. 101-46

Notice: This is neither a plat nor a survey. It is furnished merely as a convenience to aid you in locating the land indicated hereon with reference to street and other land. No liability is assumed by reason of any reliance hereon.



1 of 2 Maps



A-ANDRADE-GULARTE TRACT M.B. 7-175
 B-WEST RICHMOND TRACT M.B. F-122

BATTERY STREET

01

Parcel Two

CASTRO

POR. 872-7-10 PCL. 5

S. P. R. R.

450.5

676.63

R=173.75.10

Any acreage shown on this map has been calculated by the County of Contra Costa; Old Republic Title Co. makes no representation as to the accuracy of such acreage.

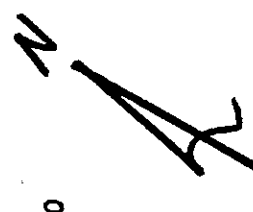
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17.09 Ac

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"Notice: This is neither a plat nor a survey. It is furnished merely as a convenience to aid you in locating the land indicated hereon with reference to street and other land. No liability is assumed by reason of any reliance hereon."



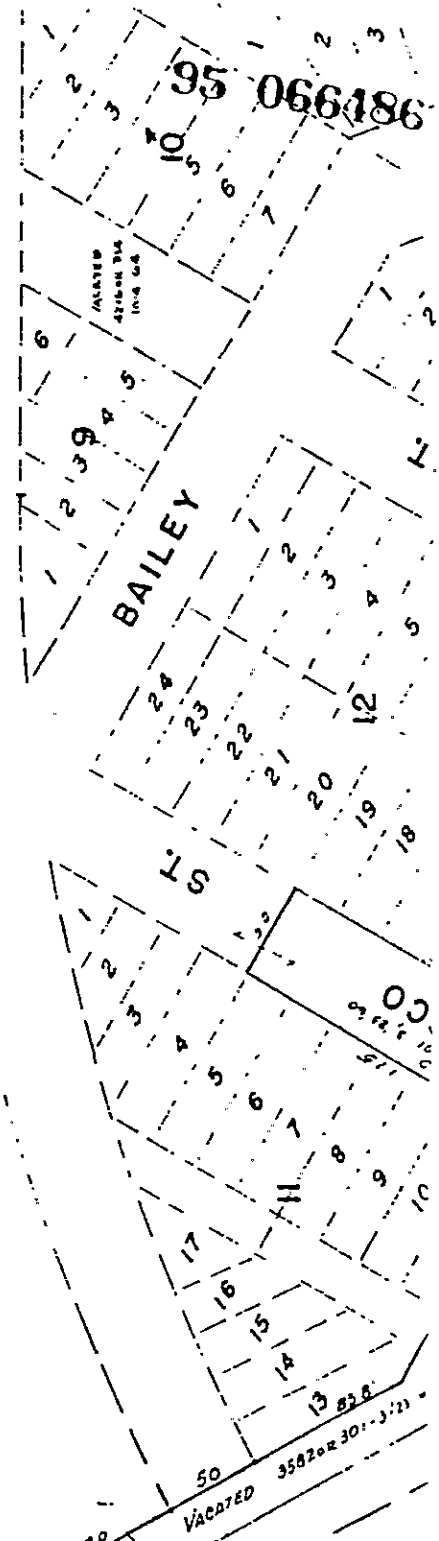
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ESSEX

ST

NORTHWEST

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2 of 2 Maps